

BOIES SCHILLER FLEXNER LLPDavid Boies (admitted *pro hac vice*)

333 Main Street

Armonk, NY 10504

Tel: (914) 749-8200

dboies@bsfllp.com

Mark C. Mao (CA Bar No. 236165)

Beko Reblitz-Richardson (CA Bar No. 238027)

44 Montgomery St., 41st Floor

San Francisco, CA 94104

Tel.: (415) 293-6800

mmao@bsfllp.com

brichardson@bsfllp.com

James Lee (admitted *pro hac vice*)

100 SE 2nd St., 28th Floor

Miami, FL 33131

Tel.: (305) 539-8400

jlee@bsfllp.com

Alison L. Anderson (CA Bar No. 275334)

Samantha Parrish (CA Bar No. 318681)

M. Logan Wright (CA Bar No. 349004)

725 S. Figueroa St., 31st Floor

Los Angeles, CA 90017

Tel.: (213) 629-9040

alanderson@bsfllp.com

sparrish@bsfllp.com

mwright@bsfllp.com

*Attorneys for Plaintiffs***SUSMAN GODFREY L.L.P.**Bill Carmody (admitted *pro hac vice*)Shawn J. Rabin (admitted *pro hac vice*)Steven M. Shepard (admitted *pro hac vice*)Alexander Frawley (admitted *pro hac vice*)

1301 Avenue of the Americas, 32nd Floor

New York, NY 10019

Tel.: (212) 336-8330

bcarmody@susmangodfrey.com

srabin@susmangodfrey.com

sshepard@susmangodfrey.com

afrawley@susmangodfrey.com

Amanda K. Bonn, CA Bar No. 270891

1900 Avenue of the Stars, Suite 1400

Los Angeles, CA 90067

Tel.: (310) 789-3100

abonn@susmangodfrey.com

MORGAN & MORGANJohn A. Yanchunis (admitted *pro hac vice*)Ryan J. McGee (admitted *pro hac vice*)

201 N. Franklin Street, 7th Floor

Tampa, FL 33602

Tel.: (813) 223-5505

jyanchunis@forthepeople.com

rmcgee@forthepeople.com

Michael F. Ram, CA Bar No. 104805

711 Van Ness Ave, Suite 500

San Francisco, CA 94102

Tel: (415) 358-6913

mram@forthepeople.com

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL CATALDO,
JULIAN SANTIAGO, and SUSAN LYNN
HARVEY, individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 3:20-cv-4688-RS

**PLAINTIFFS' OPPOSITION TO
GOOGLE'S MOTION *IN LIMINE* 14
(DKT. 600)**

Judge: Hon. Richard Seeborg

Trial Date: August 18, 2025

Google filed this seven-page motion *in limine* no. 14 (the “Motion”) in response to a one-sentence email from Plaintiffs’ counsel, without responding to the email or meeting and conferring with Plaintiffs. Google’s Motion concerns a Google data breach that occurred in June 2025, which Google confirmed on August 5, 2025, and was reported by Forbes on August 7, 2025. Google with its Motion seeks to “exclude all testimony, evidence, and argument concerning the June 2025 data breach.” Mot. at 2.

On August 8, 2025, Plaintiffs informed Google by email that two of Plaintiffs’ experts (privacy expert Prof. Schneier and technical expert Dr. Hochman) “intend to testify about recent data breaches Google has experienced, including the breach mentioned in this article published recently.” Mot. at 3; Mateen Decl. Ex. A. The underlined portion was a hyperlink to the Forbes article, published on August 7, 2025, and updated on August 9, 2025. The updated article states in the first sentence that the “Google Threat Intelligence Group has officially confirmed that user data has been stolen following a successful hack attempt impacting one of its databases.” Mao Decl. Ex. A (updated version of Matten Decl. Ex. B). Google issued this confirmation two days earlier on August 5, 2025.¹

Plaintiffs’ experts should be permitted to reference this June 2025 Google data breach during trial because it provides further support for their existing opinions. For example, Prof. Schneier’s first report (from February 2023) includes a section detailing Google’s long history of data breaches. *See* Dkt. 361-57 (Schneier Report) ¶¶ 222–30. Plaintiffs’ recent disclosure is both “substantially justified” and appropriate because this is information Prof. Schneier could not have disclosed earlier, given that the breach occurred in June 2025 and Google only confirmed that it occurred last week. Fed. R. Civ. P. 37(c)(1). Regardless, since Google apparently investigated the breach for months before admitting to it publicly, Google is solely to blame for any delay in disclosure.

¹ *See* Google Blog, *The Cost of a Call: Voice from Phishing to Data Extortion*, available at <https://cloud.google.com/blog/topics/threat-intelligence/voice-phishing-data-extortion> (last accessed Aug. 13, 2025).

Moreover, Google’s Motion goes beyond expert testimony and by its terms seeks to preclude any use of these recently discovered facts in questioning Plaintiffs’ fact witnesses or cross-examining Google’s fact and expert witnesses. Google provides no basis for such a preclusion.

Google’s argument that breaches by “external” hackers is entirely unrelated to the adequacy of its consumer privacy disclosures” (Mot. at 6, emphasis in original) misses the point. The harm to Google users from Google’s collecting and saving their data without consent is clearly related to the risk that, as a result of a data breach, other parties may obtain access to that information. The fact that the data breach occurred after the class period is irrelevant since Google still stores that data.

Plaintiffs’ disclosure is also “harmless.” Fed. R. Civ. P. 37(c)(1). No one is offering any new opinions. Plaintiffs’ experts will only use the June 2025 breach as further support, in addition to other data breaches, for prior opinions that Google saving this (s)WAA-off data harms people by putting them at risk, including from future data breaches. *See* Dkt. 361-57 (Schneier Report) ¶¶ 222–30; *see also* Dkt. 511, at 5 (denying Google’s motion to exclude portions of the Schneier report that discuss data breaches).

Dr. Hochman should also be permitted to reference the June 2025 data breach at trial. During his deposition, it was Google’s counsel that repeatedly questioned him about “privacy risk.” Mao Decl. Ex. B (Hochman Dep. Tr.) at 102:5, 103:6. Dr. Hochman explained that Google creates risk by simply taking data without permission: “It doesn’t matter how careful you are. There are breaches. There are leaks. There is insider threat. All kinds of problems. And the person who asks for privacy and expected privacy didn’t bargain for that.” *Id.* at 103:25–104:5. Google already previewed that it intends to argue that it has not harmed anyone and employs numerous “safeguards” to protect users’ privacy. If so, Dr. Hochman should be able to present his opinions (as reflected in deposition testimony elicited by Google’s counsel) using examples that Google belatedly disclosed.

Google’s argument that the experts’ “delay” in “disclosing” the recent breach “years after the close of expert discovery” (Mot. at 4, emphasis in original) warrants exclusion is hard to understand. How could the experts have disclosed this breach before it happened? They disclosed that such a breach was a risk, and this recent breach is merely confirmation of that prior conclusion.

Google’s focus on how this latest breach occurred after the end of the class period (Mot. at 5) provides no basis for exclusion. Again, Google has been investigating this event for months, and it has not said a word to Plaintiffs or the Court. Further, the relevant point is that Google saving this (s)WAA-off data harmed Plaintiffs and class members by putting them at risk of future data sharing and leaks, including data breaches. And Google continues to refuse to identify all logs containing (s)WAA-off data, so Plaintiffs cannot even assess the full scope of that harm. Data breaches by their nature are also difficult to detect. Prof. Schneier and Dr. Hochman should be allowed to testify about how this latest Google data breach confirms the harm to Plaintiffs and class members.

Google’s focus on how this breach “involved different data and systems” (Mot. at 5) also provides no basis for exclusion. The Forbes article specifically notes that “user data” was stolen (Mao Decl. Ex. A), and the relevant point is that Google regularly faces data breaches. Google’s public disclosures regarding this event do not indicate that it has completed its investigation, or that there is no (s)WAA-off data at issue. Even if the data breach did not include (s)WAA-off data, it is still relevant. Google is, of course, free to raise their counterarguments in a cross-examination.

Google’s concern that it would be prejudicial for Plaintiffs or their experts to say “Google has been hacked” without restraint (Mot. at 6) is easily addressed. Plaintiffs did not add the Forbes article to their exhibit list, and they are not planning to present it to the jury. Plaintiffs just seek to have Prof. Schneier and Dr. Hochman be able to explain how this latest data breach supports their opinions. Google’s own deposition examinations of both experts not only demonstrate that Google itself opened the door on this issue, but that Plaintiffs should be able to use any evidence available to them (including those belatedly produced by Google) to rebuff Google’s cross-examination on issues covered in the experts’ reports and depositions.

For these reasons, Plaintiffs respectfully request that the Court deny the Motion.

Dated: August 14, 2025

Respectfully submitted,

By: Mark C. Mao

Mark C. Mao (CA Bar No. 236165)

mmao@bsfllp.com
Beko Reblitz-Richardson (CA Bar No. 238027)
brichardson@bsfllp.com
BOIES SCHILLER FLEXNER LLP
44 Montgomery Street, 41st Floor
San Francisco, CA 94104
Telephone: (415) 293-6800
Facsimile (415) 293-6899

David Boies (*pro hac vice*)
dboies@bsfllp.com
BOIES SCHILLER FLEXNER LLP
333 Main Street
Armonk, NY 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

James Lee (*pro hac vice*)
jlee@bsfllp.com
BOIES SCHILLER FLEXNER LLP
100 SE 2nd Street, Suite 2800
Miami, FL 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

Alison L. Anderson (CA Bar No. 275334)
alanderson@bsfllp.com
Samantha Parrish (CA Bar No. 318681)
sparrish@bsfllp.com
M. Logan Wright (CA Bar No. 349004)
mwright@bsfllp.com
BOIES SCHILLER FLEXNER LLP
725 S. Figueroa St., 31st Floor
Los Angeles, CA 90017
Telephone: (213) 629-9040
Facsimile: (213) 629-9022

Bill Carmody (*pro hac vice*)
bcarmody@susmangodfrey.com
Shawn J. Rabin (*pro hac vice*)
srabin@susmangodfrey.com
Steven Shepard (*pro hac vice*)
sshepard@susmangodfrey.com
Alexander P. Frawley (*pro hac vice*)
afrawley@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor

1 New York, NY 10019
2 Telephone: (212) 336-8330
3 Facsimile: (212) 336-8340

4 Amanda Bonn (CA Bar No. 270891)
5 abonn@susmangodfrey.com
6 SUSMAN GODFREY L.L.P.
7 1900 Avenue of the Stars, Suite 1400
8 Los Angeles, CA 90067
9 Telephone: (310) 789-3100
10 Facsimile: (310) 789-3150

11 John A. Yanchunis (*pro hac vice*)
12 jyanchunis@forthepeople.com
13 Ryan J. McGee (*pro hac vice*)
14 rmcgee@forthepeople.com
15 MORGAN & MORGAN, P.A.
16 201 N Franklin Street, 7th Floor
17 Tampa, FL 33602
18 Telephone: (813) 223-5505
19 Facsimile: (813) 222-4736

20 Michael F. Ram (CA Bar No. 238027)
21 mram@forthepeople.com
22 MORGAN & MORGAN, P.A.
23 711 Van Ness Avenue, Suite 500
24 San Francisco, CA 94102
25 Telephone: (415) 358-6913
26 Facsimile: (415) 358-6923

27 *Attorneys for Plaintiffs*
28